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REPORT
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SETTLING CERTAIN LAND CLAIMS OF THE COUSHATTA TRIBE OF LOUISIANA AGAINST THE UNITED STATES, TO AUTHORIZE THE USE AND DISTRIBUTION OF THE SETTLEMENT FUNDS, AND FOR OTHER PURPOSES

AUGUST 10, 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 3617]

The Select Committee on Indian Affairs to which was referred the bill (H.R. 3617) to settle certain land claims of the Coushatta Tribe of Louisiana against the United States, to authorize the use and distribution of the settlement funds, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 3617 is to give effect to a recommended settlement agreed upon between the United States and the Coushatta Tribe of Louisiana, approved by the Chief Judge of the U.S. Claims Court in a congressional reference from the House of Representatives. The bill compensates the Tribe in the amount of $1,300,000 for the loss of its lands, in accordance with the recommended settlement, and authorizes the use and distribution of such funds.

HISTORY

The Coushatta Tribe of Louisiana is a federally-recognized Indian tribe located in southwestern Louisiana near the town of Elton. The tribe is currently organized under a state charter of incorporation and has a current membership of approximately 614.

The Coushatta (Koasati) Indians are of the Muskhogean linguistic group and were closely allied with, and related to, the Alabama Indians, both of whom were located on the upper Alabama River in the 18th century. The Alabama and Coushatta, together with the more numerous and dominant Muscogee tribes and several unrelated tribes, constituted the Creek Confederacy which was in exist-

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ence perhaps as early as 1540. Up until the latter part of the 18th Century, the Creek Confederacy controlled much of what is now Alabama, Georgia, and northern Florida.

With the advent and growth of white settlements on the eastern seaboard, members of the Creek Confederacy were pressured west. Beginning in the late 18th century, the Alabama and Coushatta migrated westward into what is now Louisiana and Texas. Beginning before and ending after the United States acquired Louisiana through the Louisiana Purchase, the ancestors of the present Coushatta Indians of Louisiana exclusively used and occupied, for a long period of time, land in what is now Louisiana, principally located between the 30th and 31st parallels of North latitude and between the Sabine and Achafalaya Rivers. After the Louisiana Purchase in 1803, the tribal lands were taken from the Indians by the United States through the making of sales and grants of such land to non-Indians pursuant to Acts of Congress without the payment of compensation to the Indians.

BACKGROUND

H.R. 1232, a bill to settle the land claims of the Alabama-Coushatta Tribe of Texas and the Coushatta Tribe of Louisiana, was introduced in the 98th Congress and referred to the House Committee on the Judiciary. That Committee reported, and the House passed, House Resolution 69 which referred H.R. 1232 to the Chief Judge of the United States Claims Court, and directed him to "proceed with the same in accordance with the provisions of section 1492 and 2509 of title 28, United State Code." It is the purpose of these sections to authorize the claims Court to make and report findings of fact and conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

Both the Louisiana and Texas tribes filed separate complaints with the Chief Judge under the reference, and the cases were assigned to a Hearing Officer. Since it was determined that the two tribes are separate legal entities and that their claims were different in nature, the proceedings under House Resolution 69 were conducted by the Hearing Officer as though two separate Congressional References were involved.

The gist of the claim of the Coushatta Tribe of Louisiana was stated in their compliant as follows:

> The Louisiana Tribe at one time had Indian title to and Indian use and occupancy of large tracts of land. It lost all of same by wrongful acts of defendant under circumstances which would have entitled it to compensation from the defendant under the Indian Claims Commission Act and * * * it seeks such compensation by the legislation which is the subject of this congressional reference. This plaintiff, the Coushatta Tribe of Louisiana, failed to file a claim for such compensation by August 13, 1951, the date fixed by statute * * * for such filing. The Louisiana Tribe's failure to so file was due to wrongful failure on the part of the government, the United States of America, to perform the duty required of it by statute * * * to

notify this tribe of the provisions of the Act and of its right to file, and this Tribe had no actual notice of the provisions of the Act.

After the development of exhaustive documentation by both sides and after extensive negotiations by their counsels, the United States and the Tribe filed with the Chief Judge a document entitled, "Stipulations of Agreement to Recommend Settlement". Although the parties were unable to agree on the exact extent and value of land in Louisiana which was occupied and used exclusively before 1803 by ancestors of the present Coushatta Tribe of Louisiana and which thereafter was taken and disposed of by the United States without compensation to the Indians, they did agree, in compromise and settlement, that the Tribe should be compensated for such loss in the amount of $1,300,000.

Based upon these stipulations, the Claims Court found that the proposed settlement is fair, just and equitable; that it is supported by the evidence; that the tribe has an equitable claim and that the amount equitably due it is the sum of $1,300,000 in full settlement of all the Tribe's claims. It further found that the failure of the Tribe to file a timely claim with the Indian Claims Commission was excusable because of the failure of the Government to notify the Tribe of such legislation, as required by law. The Chief Judge submitted a report to Congress making those recommendations.

LEGISLATIVE HISTORY

H.R. 3617 was introduced in the 100th Congress by Mr. Hayes of Louisiana to carry out the recommendations of the report of the Chief Judge and the agreement of the Tribe and the United States. The bill was referred to the House Judiciary Committee which reported the bill on April 12, 1988. At the request of the Chairman Udall, the bill was sequentially referred to the House Committee on Interior and Insular Affairs. H.R. 3617 was reported by the House Committee on Interior and Insular Affairs on June 1, 1988, with an amendment in the nature of a substitute.

The bill, as amended, was passed by the House and Received in the Senate on June 14, 1988, where it was referred to the Select Committee on Indian Affairs for consideration. A companion bill, S. 1589, was previously introduced in the Senate by Mr. Breaux of Louisiana, and was referred to the Senate Judiciary Committee for consideration. On July 29, 1988, the Select Committee on Indian Affairs, in open business session, adopted H.R. 3617 without amendment and ordered the bill reported with a recommendation for passage.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on July 29, 1988, by unanimous vote of a quorum present, adopted H.R. 3617 without amendment and ordered the bill reported with a recommendation that the bill do pass as reported.

SECTION-BY-SECTION ANALYSIS

Section 1. Settlement payment

Subsection (a), paragraph (1), directs the Secretary of the Treasury to pay to the Secretary of the Interior ("Secretary"), for the benefit of the Coushatta Tribe of Louisiana ("Tribe"), $1,300,000.

Paragraph (2) is a congressional declaration that this payment is the value of the settlement between the U.S. and the Tribe for wrongful taking of tribal land in the 19th century.

Subsection (b) provides that such payment shall be in full payment for any and all claims the Tribe may have against the United States which it could have filed pursuant to the Indian Claims Commission Act of 1946. This language is, in substance, the language recommended by the Department of Justice in its report to the Committee on the Judiciary.

Subsection (c) provides that the Secretary of the Interior ("Secretary") shall invest such funds, less the amount paid to the Tribe pursuant to section 2(b), and any amount paid as attorney fees pursuant to section 3, as provided by law governing the investment of tribal trust funds. The Committee intends that the percentages established in section 2(b) and section 3 will be applied to the amount paid by the Secretary of the Treasury prior to the accrual of any interest or other income.

Section 2. Use and distribution of funds

Subsection (a) provides that the amount invested pursuant to section 1 plus any accrued earning, less the amount reserved and paid to the Tribe pursuant to section 4, shall be distributed as provided in this section.

Subsection (b) requires the Tribe to develop a plan for the use of the funds. The Secretary is to assist in the development of the plan and must approve it. This subsection directs the Secretary to make available to the Tribe three percent of the funds appropriated to assist the Tribe in the development of the plan.

Subsection (c) requires that the Secretary, prior to approving the plan, be assured that members of the Tribe had a realistic opportunity to be consulted on the development of the plan and that the tribal plan complies with three of the requirements established by the Indian Judgment Distribution Act (25 U.S.C. 1403 et seq.), i.e., that per capita interests of minors and incompetents be protected; that not less than 20% of the funds be used for tribal programs unless the Secretary determines that circumstances clearly warrant otherwise; and that the tribe will be able to carry out the plan.

Subsection (d), paragraph (1), provides that, if the approved plan provides that any portion of the available funds are to be paid out per capita to members, that such per capita payments will be made as provided in this subsection.

Paragraph (2), subparagraph (A), provides that the Secretary, within 180 days after a plan is approved, shall prepare a roll of tribal members eligible to receive per capita payments. Persons included on such roll must have been born on or prior to, and be living on, the date of enactment. In addition, such persons (1) must either be on the current roll prepared by the Tribe and filed with

the Bureau of Indian Affairs or be able to prove to the Secretary that they are at least ¼ degree Louisiana Coushatta and (2) may not be enrolled with any other Indian tribe.

Subparagraph (B) provides that the Secretary, within 30 days after approval of a plan which provides for per capita payments, must give notice of the right of persons to apply for addition to the tribal roll as provided in subparagraph (A). Notice is to be published in the Federal Register and in appropriate newspapers including those in the vicinity of the Tribe. Applications for such enrollment must be submitted within 90 days of publication in the Federal Register of such notice.

Subparagraph (C) provides that the determination of the Secretary as to the eligibility of a person for addition to the tribal roll as provided in subparagraph (A) shall be final.

Paragraph (3) provides that per capita payments shall then be made, in equal share, to each person on the roll and that such payments shall be subject to the provisions of section 7 of the Indian Judgment Distribution Act (25 U.S.C. 1407), which exempts such payments from taxation or from being considered as other resources for purposes or eligibility for certain Federal programs or benefits.

Section 3. Attorney fees

Section 3 limits the payment of attorney fees from the settlement payment relative to services rendered in connection with such payment to not more than ten percent. Violation of the section would be punished by a $1,000 fine.

Section 4. Tribal organization

Subsection (a) makes the Indian Reorganization Act of 1934 (25 U.S.C. 461 et seq.) applicable to the Tribe and authorizes the Tribe to organize a governmental structure under section 16 of that Act. While the provisions of the Act are made applicable to the Tribe, the Committee wishes to make clear that the decision to organize under section 16, to organize under some other authority, or to retain its existing organization is within the discretion of the Tribe.

Subsection (b) provides that the membership roll established by this Act shall be used as the base tribal membership roll for purposes of such organization.

Subsection (c) directs the Secretary to reserve five percent of the amount available for distribution and directs the Secretary, upon the request of the Tribe, to disburse those funds to the Tribe, to disburse those funds to the Tribe to assist the Tribe in its effort to organize. The Committee intends that the funds reserved will be invested by the Secretary as tribal trust funds pending disbursement. If the Tribe does not request the funds for that purpose within 3 years, the Secretary is directed to turn those funds over to the Tribe for such uses as it may desire.

COST AND BUDGETARY CONSIDERATION

The cost estimate for H.R. 3617 as provided by the Congressional Budget Office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3617, an act to settle certain land claims of the Coushatta Tribe of Louisiana against the United States, to authorize the use and distribution of the settlement funds, and for other purposes, as ordered reported by the Senate Select Committee on Indian Affairs, July 29, 1988.

H.R. 3617 directs the Secretary of the Treasury to pay $1.3 million to the Secretary of the Interior to be held in trust for the settlement of certain land claims of the tribe against the United States. The act requires the tribe to develop a plan for the use and distribution of these funds, subject to the approval of the Secretary of the Interior and to certain restrictions in the legislation. H.R. 3617 also authorizes the Coushatta to use some of the settlement funds for tribal organization.

CBO estimates that enactment of this legislation would result in additional budget authority and outlays of $1.3 million plus interest over the period the Department of the Interior holds the funds in trust for the tribe. These amounts would be direct spending and would not require appropriation action. Based on information provided by the Bureau of Indian Affairs, we estimate that the outlays would occur largely in fiscal year 1989. No costs would be incurred by state or local governments as a result of enactment of this legislation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM, *Acting Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 3617 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The following communication was received by the Senate Judiciary Committee, Subcommittee on Courts and Administrative Practice:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, January 13, 1988.

Re S. 1589—The Coushatta Tribe of Louisiana.

Hon. HOWELL HEFLIN,
Chairman, Subcommittee on Courts and Administrative Practice, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with the views of the Department of Justice on S. 1589, a bill for the relief of the Coushatta Tribe of Louisiana.

The bill would authorize an appropriation of $1.3 million in settlement of a dispute over the uncompensated taking by the United States of land owned or occupied by the Coushatta Tribe of Louisiana in the Nineteenth Century. This dispute was the subject of a Congressional Reference to the United States Claims Court pursuant to H. Res. No. 69, 98th Cong., 1st Session. In the course of the proceedings, the United States and the Coushatta Tribe of Louisiana agreed to a settlement of the dispute.

The Department of Justice objects to S. 1589 in its current form for two reasons: first, it does not fully reflect the terms of the settlement agreement; second, it provides that the funds be distributed among members of the Tribe rather than being retained for Tribal programs.

As for the settlement agreement, S. 1589 does not, in its current form, fully reflect the agreement between the United States and the Tribe that payment would finally dispose of all rights, claims, or demands which were or *could* have been asserted under the provisions of the Indian Claims Commission Act. In order to more precisely reflect the settlement agreement, we recommend that S. 1589 be amended by striking the language at page 2, lines 9–23, and replacing it with the following language:

> the 19th century. The payment of such sum shall be in full settlement of, and shall finally dispose of, all rights, claims, or demands which the Coushatta Tribe of Louisiana has asserted or could have asserted under the provisions of the Indian Claims Commission Act, Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. § 70, et seq.

As for the disposition of the appropriated funds, it is the policy of the Administration that, when possible, funds of this type not be distributed per capita, but rather, be used by the Tribe to provide programs and services for tribal members. Accordingly, we recommend that S. 1589 be amended by striking the language at page 2, lines 2–5, and replacing it with the following language:

> $1,300,000 to be held in trust for the Coushatta Tribe of Louisiana by the Secretary of the Interior to be used under a plan developed by the Tribe and approved by the Secretary of the Interior. Such funds shall be subject to section 7 of the Act of October 19, 1973, 87 Stat. 468, 25 U.S.C. § 1401. This sum of $1,300,000 represents the value of a settlement

The Department of Justice would support S. 1589 with the foregoing amendments.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this Report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that enactment of H.R. 3617 will not result in any change in existing law.

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